

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

VICTOR L. CANDELARIO,
Petitioner,
v.
RON VAN BOENING,
Respondent

Case No. C08-5124 BHS/KLS

**ORDER TO SHOW CAUSE WHY
THIS ACTION SHOULD NOT BE
DISMISSED**

The petitioner in this action is seeking federal habeas corpus relief pursuant to 28 U.S.C. § 2254. This case has been referred to Magistrate Judge Karen L. Strombom pursuant to Title 28 U.S.C. §§ 636 (b) (1) Local MJR 3 and 4.

Petitioner is challenging his commitment past his release date because he has no means of support in Kitsap County, where he was convicted in February 1996. (*See* proposed Habeas Petition, Dkt. # 1). Petitioner states that he has filed an appeal with the Washington state courts and is waiting a final decision on that appeal.¹

¹The Court's own review reveals that Petitioner filed a personal restraint petition challenging his underlying conviction for second-degree felony murder based on the predict of offense of assault. The Washington Court of Appeals issued its decision on July 16, 2005, vacating his 1999 felony murder conviction, but finding double jeopardy does not bar the State from bringing a charge of second degree intentional murder charge on remand. *See In re Matter of Personal Restraint of Victor L. Candelario*, 118 P.3d 349, 354 (2005). There were no appellate records found, however, on Petitioner's challenge to his release date.

1 There is an exhaustion requirement in federal court for habeas actions. In order to satisfy the
2 exhaustion requirement, petitioner's claims must have been fairly presented to the state's highest court.
3 *Picard v. Connor*, 404 U.S. 270, 276 (1971); *Middleton v. Cupp*, 768 F.2d 1083, 1086 (9th Cir. 1985). A
4 federal habeas petitioner must provide the state courts with a fair opportunity to correct alleged violations
5 of prisoners' federal rights. *Duncan v. Henry*, --- U.S. ---, 115 S.Ct. 887, 888 (1995). It is not enough
6 that all the facts necessary to support the federal claim were before the state courts or that a somewhat
7 similar state law claim was made. *Id.*, citing *Picard v. Connor*, 404 U.S. 270 (1971) and *Anderson v.*
8 *Harless*, 459 U.S. 4 (1982). Thus, petitioner's claim before this court at this time appears unexhausted.

9 2. Accordingly, petitioner shall show cause why this petition should not be dismissed. A
10 response is due by **April 18, 2008**. If petitioner fails to file a response or the response shows the petition
11 cannot go forward the court will enter a report and recommendation that the petition be dismissed.

12 3. The Court Clerk is directed to send a copy of this Order to Petitioner.

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14 DATED this 17th day of March, 2008.

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19 Karen L. Strombom
20 United States Magistrate Judge

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